



# California Fair Political Practices Commission

December 13, 1985

John M. Gatto  
Councilmember  
City of Cupertino  
10300 Torre Avenue  
Cupertino, CA 95014

Re: Your Request for Advice,  
Our File No. A-85-253

Dear Mr. Gatto:

This is in response to your letter dated December 2, 1985, requesting advice concerning the application of the Political Reform Act of 1974 (the "Act").<sup>1/</sup>

## FACTS

You are a member of the Cupertino City Council and you also serve on the Board of Directors of the Cupertino National Bank. According to City policy, the City Treasurer, who is appointed by the Council, makes all decisions regarding investment of City funds.

## QUESTION

You wish to know whether a conflict of interest will exist if the City invests any funds with the Cupertino National Bank?

## CONCLUSION

So long as you do not participate in making or influencing the decision to invest City funds in the Cupertino National Bank you will not be in violation of the Act.

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise specified. This letter does not address any conflict of interest issues that might arise under Section 1090 of the Government Code. You may wish to consult with the Attorney General's Office regarding any possible violation of that law.

#### ANALYSIS

The Act provides that a public official may not make, participate in making, or in any way attempt to use his or her official position to influence a governmental decision in which he or she has a financial interest. Section 87100.

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

\* \* \*

#### Section 87103.

As a director of the Cupertino National Bank you have a financial interest in the Bank pursuant to Section 87103(d). Accordingly, you must disqualify yourself from participating in any governmental decision where it is reasonably foreseeable that the decision will have a material financial effect,

John M. Gatto  
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distinguishable from its effect on the public generally, on the Bank.

In order to assist public officials in determining when disqualification is required, the Commission has adopted regulations which describe certain situations where disqualification is always required.

2 Cal. Adm. Code Section 18702.1 provides in pertinent part:

...a public official shall not make, participate in making, or use his or her official position to influence a governmental decision if...any business entity in which the official...is an officer, director, partner, trustee, employee...appears before the official in connection with the decision....

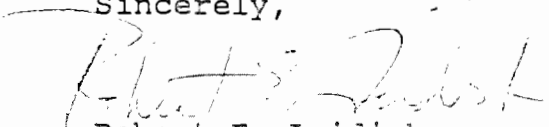
The regulation further provides that a business entity appears before an official in connection with a decision when that entity is "a named party in the proceeding concerning the decision before the official or the body on which the official serves." 2 Cal. Adm. Code Section 18702.1(b)(2).

If the City Council were to vote on whether or not to invest City funds in the Cupertino National Bank, the Bank would be perceived as being a "party in the proceeding." It follows, therefore, that the Bank would be "appearing before the body" on which you serve. Because the effect of such a decision would be distinguishable from its effect on the public generally, disqualification would be required.

If, however, the decision to invest City funds is not made by the City Council but rather by the City Treasurer, no conflict of interest arises so long as you do not use your official position to influence the City Treasurer's decision regarding where to invest City funds. See, 2 Cal. Adm. Code Section 18700.1, copy enclosed.

I hope this adequately answers your question. If you should require additional advice regarding the application of the Act, please do not hesitate to contact us again.

Sincerely,



Robert E. Leidigh  
Counsel  
Legal Division

REL:JG:nwm  
Enclosure



City of Cupertino  
DEC 6 8 31 AM '85

10300 Torre Avenue  
Cupertino, California 95014  
Telephone: (408) 252-4505

P.O. Box 580  
Cupertino, California 95015

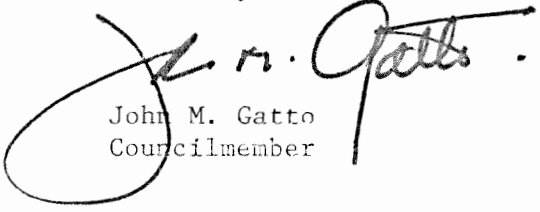
OFFICE OF THE CITY CLERK

December 2, 1985

Fair Political Practices Commission  
P. O. Box 807  
Attention: Technical Assistance and  
Analysis Division  
Sacramento, California 95804

I serve on the City Council of the City of Cupertino and the Board of Directors of the Cupertino National Bank. According to City policy, the City Treasurer, who is appointed by Council, makes all decisions regarding investment of City funds. If Cupertino invests with the Cupertino National Bank would that put me in violation of any conflict of interest laws?

Sincerely,

  
John M. Gatto  
Councilmember

cc: City Council  
City Attorney